



IN THE

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976
NO. 76-945

UNITED MINE WORKERS OF AMERICA,

Petitioner,

v.

CECIL L. KINTY, d/b/a KINTY TRUCKING COMPANY;
RUTH M. KITTLE, Individually and as Administratrix
With Will Annexed of the Estate of Bertsell Kittle,
Deceased;

THOMAS J. GATES, d/b/a DOROTHY COAL COMPANY
and GATES TRUCKING COMPANY;

LAWRENCE LAYMAN, d/b/a LAYMAN COAL COMPANY;
JOSEPHINE LACARE, Widow of Original Plaintiff
ORLANDA LACARE, and AGNES LACARE GOBEL,
PATRICIA LACARE CLEAVENGER and FRANCES
LACARE,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

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CECIL L. KINTY, d/b/a KINTY TRUCKING COMPANY,
- - - - - Respondent.

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RUTH M. KITTLE, Individually and as Administratrix With
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UNITED MINE WORKERS OF AMERICA - - - - - Petitioner

v.

LAWRENCE LAYMAN, d/b/a LAYMAN COAL COMPANY
- - - - - Respondent.

UNITED MINE WORKERS OF AMERICA - - - - - Petitioner

v.

JOSEPHINE LACARE, Widow of Original Plaintiff ORLANDA
LACARE, and AGNES LACARE GOBEL, PATRICIA LACARE
CLEAVENGER and FRANCES LACARE - - - - - Respondent.

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, who are the opposition to the Petitioner, United Mine Workers of America ("UMW") named in the captions of the above styled five cases, respectfully show to the Court that the first petition filed in this litigation was filed by the first two Respondents herein, Kinty and Kittle, and bears No. 76-759 in this Court. Respondents oppose the granting of a writ of certiorari in response to UMW's petition and cross-petition for the reasons given below.

STATEMENT OF THE CASE

As UMW shows in its petition, these five cases were consolidated and tried together with five other cases, these five Respondents having been successful, and the other five plaintiffs unsuccessful, in the verdicts and judgments in the trial court. The first two Respondents, Kinty and Kittle, have filed their petition for a writ of certiorari in Case No. 76-759 after the Court of Appeals for the Fourth Circuit reversed their judgments and remanded for new trial saying that the trial judge should have charged the jury on the "ally" defense as to their cases.

The judgments of the other three Respondents herein were affirmed in the Court of Appeals. Now UMW comes with its petition to challenge once again the right of these three Respondents, Gates, Layman and LaCare, to recover in this litigation that now covers the period 1958 to 1977.

UMW's statements with respect to the facts in these cases in its formulation of the questions and in the body of the petition are contrary to the preponderance of evidence and the verdict of the jury which has been sustained now by the Trial Court and the Fourth Circuit Court of Appeals.

These cases arose out of UMW's efforts to organize certain coal production companies in the area of Fairmont, West Virginia, covering about sixteen months in 1958 and 1959. There are literally hundreds of pages of proof from numerous witnesses that the efforts of UMW to organize were aimed at certain companies in the field, including the five unsuccessful plaintiffs in the Trial Court, but not including these Respondents. This proof shows that, in order to accomplish its object of organizing the companies from which it was seeking recognition and contract signatures, UMW tried to shut down the whole coal field. The proof shows this was accomplished by massive gangs of pickets at crucial public road intersections used by the coal hauling trucks servicing various coal mining operations. All coal hauling was stopped for a long time. These Respondents could not haul for sixteen months - they were involved in no requests for recognition, nor requests for contract signatures with respect to their employees and were extended no attention by UMW except for the order (under dire threats of force) that they stop business until UMW got what it wanted from the target companies.

These Respondents were not companies who were tied to, or dependent on, any one coal producer, coal shipper or coal buyer. They were independent, responsible, tax paying small business men with their own employees.

Contrary to what UMW contends in its petition, there were no common situs coal production operations with any primary employer by Layman, Gates or Lacare. Each operation involved was isolated and a number of miles lay between the various mines and tipples dealt with, as shown by a host of witnesses and the map introduced in the record.

Contrary to what UMW contends in its petition, there were no "private" roads involved to any significant degree in the picketing and road blocks which stopped these Respondents. The description of the activity contained in the decision of the Court of Appeals is based on the overwhelming weight of the evidence. The road blocks were at strategic public road intersections and it was from these vantage points that the mobs of pickets moved to snuff out opposition.

Contrary to repeated statements in the UMW petition, the record in this cause erases all doubt as to who was responsible for the effective closing of Respondents' businesses. The proof which was introduced at trial covered all the cases and it was equally applicable to all cases; again contrary to the indication in UMW's petition. Direct testimony of actual participants who were acting on commands from UMW officials in charge is included in the record. Some of these witnesses went to the penitentiary and served their time for what the UMW ordered them to do.

Contrary to UMW's petition there was an abundance of evidence that there was a reign of terror and fear in the area which, together with the long continual presence of the mobs at the road blocks, effectively persuaded all employees of all companies to stop work.

These and other factual matters are made fairly clear in the decision of the Court of Appeals, but they needed to be stressed here because of the statements made in the UMW petition.

ARGUMENT

All four of UMW's questions are afflicted with the problem that the factual frame of reference expressed by the question and aimed at by the argument does not fit this record or the findings of the jury. The granting of the writ would lead inevitably to examination of a multitude of subsidiary factual considerations all of which would be resolved in favor of the verdict and judgment because, not only is there substantial evidence, but there is overwhelming evidence to support the contentions of the plaintiffs, the jury verdict and the decision of the Court of Appeals sustaining the jury verdicts.

With respect to the first question, picketing on "private" roads was not a factor so far as the activities which destroyed the Respondents' businesses were concerned. The roads actually involved were public roads. UMW truly made no effort, after the road blocks were established after the first day of the strike, to carry on traditional type picketing at the premises where the actual disputes existed. The mobs spent a lot of time even on the main streets of the small communities in the area through which the coal trucks customarily passed. This kind of picketing in no way resembles the union activities in the cases upon which UMW relies. UMW had abundant opportunity and places to conduct legal and effective picketing, at places associated with the primary employers and employees without taking over the public highways and streets of the area.

Under question one, with respect to the Layman case, UMW discusses "common situs" with C & P. But there was no common situs. The two mines were miles apart. Layman's employees, like all others, were induced to quit work by the reign of fear brought on by the pickets. All the employees of the small, miscellaneous coal mining and

hauling companies were induced to quit for the obvious purpose of forcing the target companies to surrender to contract demands. This kind of activity clearly falls within the terms of Section 303.

With respect to the Gates case, UMW points out that Gates operated Gates Trucking Company and Dorothy Mining Company. As to these businesses, the UMW is again basing its arguments on factually erroneous contentions. There was no picketing of Dorothy Coal Company. The work stoppage there was induced by mobs on the public roads that were closing down the whole industry. UMW's argument here goes far beyond the record in arguing that there was a primary dispute at Dorothy Coal Company. The evidence is all to the contrary. UMW did not try to organize or get a contract for any of Gates' employees and would not take them on the picket line so they could get strike benefits after their jobs were closed down.

Under question two, UMW argues that the holding of the Fourth Circuit "prohibits a union from organizing at the same time the employees of two employers engaged in business on the same site". As stated above there is nothing in the record to show a common situs for any of the various mining operations. The location the pickets were using for closing the coal businesses was the public roads and intersections. And there was no hint in the record that UMW's efforts were aimed at "organizing" any of these Respondents. This question is entirely outside the record.

Under question three, UMW again seeks to shed responsibility for the activities and reign of fear perpetrated by the pickets, who were directed, led and instigated by the UMW officials. But the evidence is overwhelming

that UMW was responsible. The mobs that engaged in violence came from the pickets at the road blocks who roamed at the command of UMW officials to the points where particular force needed to be applied. This is spreading the debilitating effects of a labor dispute to the maximum and involves numerous disinterested bystanders and is contrary to the purposes of the secondary boycott provisions.

We submit that the Court of Appeals was correct in saying, on the evidence in this case, at page 39-42 of its decision:

"It will be remembered that the picketing was not confined to the employees of primary employers or even to a single neutral employer and his employees. As in *Osborne Mining*, *supra* (279 F(2) 723-4), it was designed and intended to affect the employees of all the neutral employers in this coal producing area. The activities of the defendant and its pickets were extensive and well advertised. They created tremendous commotion in the area. It is inconceivable that these activities, consisting of threats, assaults, mass picketing, overturned cars, dynamiting and shooting, were not known by all the employees of the neutral employers in the vicinity. And it is fair to say that to a considerable extent this was the purpose behind the activity. It is easily understood why the employees of these plaintiffs, who before the defendant began its activities were working, were unwilling to hazard reporting for work in the face of the situation which was created throughout the region and the situation which the NLRB finally concluded it had to restrain because of its coercive conduct throughout District

31. See *Flame Coal Company vs. United Mine Workers of America*, *supra*, 303 F(2) at 43; *White Oak Coal Company vs. United Mine Workers of America*, (6th Cir. 1963) 318 F(2) 591, 597-8, cert. denied 375 U.S. 966 (1964) reh. denied 379 U.S. 871 (1964); *National Labor Relations Board vs. Local 140, etc.*, *supra*, 233 F(2) 539; *N.L.R.B. vs. Dallas General Drivers, etc. Local No. 745*, *supra*, 264 F(2) 642. It is fairly and reasonably inferable - in fact the inference is compelled - that it was this activity which induced these employees to discontinue work as a means of putting pressure on the primary employers and this was the intention of the union in its area-wide activity."

UMW's question four is strictly a request that this Court review the mountain of evidence pointing to UMW's responsibility for the conduct of the pickets which ruined the businesses of these Respondents. As stated before there is direct testimony from all kinds of witnesses to establish such responsibility, including police officers and direct participants acting under orders of UMW's organizing officials, some of whom went to the penitentiary for conduct ordered by the UMW.

UMW's thought at page 18 of the petition that all this testimony was introduced in the cases of the five losing plaintiffs but had nothing to do with the cases of these five Respondents is completely unfounded. All ten cases were tried together after a consolidation for trial and the evidence was in the record for any one of the cases the same as for all other of the cases. The fact that the jury found five of the original plaintiffs were the victims of primary rather than secondary activity does not take away from the effectiveness of this evidence as ample support for the verdict in the cases of these Respondents.

With respect to the cases of Kinty and Kittle, which are the cases covered by the petition in Case No. 76-759 in this Court on the question of whether the evidence made a jury question on the defense of "ally", UMW has pointed to no evidence which would bear on the "ally" issue other than what is summarized in the decision of the Court of Appeals and in the statement of the questions in the petition in Case No. 76-759. UMW does say that Kinty participated in negotiations between UMW and the primary employee C & P. But this is not a correct conclusion. Kinty was merely present at the C & P office when the District 31 official came in and demanded a contract. Kinty did no talking and merely listened. Kinty testified about this and there was nothing else in the record about Kinty "negotiating".

UMW does make a point that Kinty and Kittle and their employees were among those to be paid additional wages in a settlement of the NLRB case against C & P. But the C & P testimony shows that this was strictly a compromise settlement recommended by C & P lawyers to get out of threatened prolonged litigation. A compromise settlement can add no facts to the evidence in the record on the "ally" issue.

CONCLUSION

For the foregoing reasons Respondents submit that the UMW Petition and Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit should be denied. Alternatively, Respondents further submit that if the Petition and Cross-Petition is granted, the Petition in No. 76-759 should be granted.

Respectfully submitted,

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